



Federal Communications Commission
Washington, D.C. 20554

May 5, 2014

DA 14-613

Small Entity Compliance Guide

Amendment of the Commission's Rules Related to Retransmission Consent

FCC 14-29
MB Docket No. 10-71

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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OBJECTIVES OF THE PROCEEDING

In the *Report and Order* (“*Order*”) in MB Docket No. 10-71 (FCC 14-29), the Commission sought to facilitate the fair and effective completion of retransmission consent negotiations by amending its rules governing the duty to negotiate retransmission consent in good faith. Specifically, the Commission adopted a rule that provides that it is a violation of the duty to negotiate in good faith under Section 325(b)(3)(C)(ii) of the Communications Act of 1934, as amended, for a television broadcast station that is ranked among the top four stations as measured by audience share (“Top Four” station) to negotiate retransmission consent jointly with another such station, if the stations are not commonly owned and serve the same geographic market. The rule is designed to promote competition among Top Four broadcast stations for MVPD carriage of their signals and the associated retransmission consent revenues. Specifically, the Commission noted in the rulemaking that agreements not to compete or to fix prices are “inconsistent with competitive marketplace considerations and the good faith negotiation requirement.”

COMPLIANCE REQUIREMENTS

- 1. General prohibition:** A television broadcast station that is ranked among the Top Four stations as measured by audience share may not negotiate retransmission consent jointly with another Top Four station, if the stations are not commonly owned, operated or controlled and serve the same geographic market.
- 2. Definitions:**
 - Stations Not “Commonly Owned.” The rule prohibiting joint negotiation applies to same market, Top Four broadcast stations that are not commonly owned, operated or controlled. The determination regarding whether stations are commonly owned, operated or controlled is based on the Commission’s broadcast attribution rules. *See* 47 C.F.R. § 73.3555 Notes. For example, Top Four stations that the Commission has permitted to be commonly owned, operated, or controlled pursuant to a waiver of the local television ownership rule will be permitted to engage in joint negotiation.
 - Stations that “Serve the Same Geographic Market.” For the purpose of applying the rule prohibiting joint negotiation, broadcast stations are deemed to “serve the same geographic market” if they operate in the same Designated Market Area (“DMA”), as determined by Nielsen Media Research or any successor entity.
 - “Top Four” Station. For the purpose of applying the rule prohibiting joint negotiation, a station is deemed to be a Top Four station if it is ranked among the top four stations in a DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.
 - “Joint Negotiation.” “Joint negotiation” includes the following coordinated activities relating to retransmission consent between or among separately owned Top Four stations serving the same DMA:

- Delegation of authority to negotiate or approve a retransmission consent agreement by one Top Four broadcast television station (or its representative) to another such station (or its representative) that is not commonly owned, operated, or controlled, and that serves the same DMA;
 - Delegation of authority to negotiate or approve a retransmission consent agreement by two or more Top Four broadcast television stations that are not commonly owned, operated, or controlled, and that serve the same DMA (or their representatives), to a common third party;
 - Any informal, formal, tacit or other agreement and/or conduct that signals or is designed to facilitate collusion regarding retransmission terms or agreements between or among Top Four broadcast television stations that are not commonly owned, operated, or controlled, and that serve the same DMA. This provision does not include disclosures otherwise required by law or authorized under a Commission or judicial protective order.
- 3. Compliance Date.** Stations subject to the rule are prohibited from engaging in joint negotiation thirty (30) days after the date of publication of the *Order* in the *Federal Register*, regardless of whether such stations are subject to existing agreements, formal or informal, written or oral, obligating them to negotiate retransmission consent jointly. On the other hand, the rule does not apply to joint negotiation by same market, separately owned Top Four stations that has been completed prior to the effective date of the rules, and it does not invalidate retransmission consent agreements concluded through such negotiation. Thus, an MVPD that files a complaint pursuant to the rule would need to demonstrate that the alleged good faith violation occurred after the effective date of the rule.

INTERNET LINKS

- Report and Order and Further Notice of Proposed Rulemaking (FCC 14-29)

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-14-29A1.docx